

REMARKS/ARGUMENTS

The following remarks are responsive to the Official Action mailed July 5, 2006.

Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,924,738 to *Poupitch*. Independent claim 26 includes a limitation that a first and second element of a device may be attached to either first item, a second item or both. The first item contains the first product while the second item in the former receptacle, said second item containing an accessory for the application of said first product. As amended, Claim 26 specifically states that the second item contains an accessory for the application of the product in the first item.

At column 3, lines 12-14, *Poupitch* discloses a package including cans assembled to a carrier. *Poupitch* also mentions that the carrier may be used "with many different containers or bottles or other articles." *Poupitch* does not state that the cans, bottles or containers may have different products therein, nevermind different products where one of the products is an accessory to the first product to help to aid in applying the first product. Therefore, *Poupitch* only discloses attaching a carrier to different containers or bottles. It never mentions that the carrier may include an accessory for the application of the first product. Applicant therefore assert that claims 26 and 27 are patentably distinct from the cited art and should be deemed allowed.

Claims 1, 6-12, and 17-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Poupitch* in view of U.S. Patent No. 2,949,204. Of these claims, claims 1 and 12 are independent and newly amended. The newly amended claims

include the additional recitation that the connecting element is a flexible strip. This recitation was previously included within claims 7 and 18 from now have been incorporated in the independent claims. The Examiner contends that *Poupitch* discloses all of the elements of the above-cited claims, except that *Poupitch* does not disclose a connecting element that permits a first side of a first element to confront a first side of a second element and a second side of the first element to confront the second side of the second element. However, the Examiner asserts that *Edwards* does teach this recitation and further contends that it would have been an obvious design choice to modify the connecting element of *Poupitch* by substituting the connecting element as taught by *Edwards*.

Claim 1 of the present application includes a recitation that not only does the connecting element permit a first side of a first element to confront a first side of a second element and a second side of a first element to confront a second side of a second element, but also that the first element and the second element may be connected to a first item and second item simultaneously or to either the first item or second item.

When combining prior references such as the Examiner has done in the present Official Action, the Examiner is required to highlight some motivation, which would lead someone to combine references. Also, when combining references, the references must be incorporated in their entirety including portions that teach away from the claimed invention as well as all of the features of both references must be incorporated. The Examiner is prohibited from picking and choosing various features from different references so as to piecemeal device until he constructs the device that includes all of the claim elements.

In such a situation, the Examiner is using the claims of the present application as a path but choosing specific elements with each reference, which is prohibited.

As such, the Examiner has combined *Edwards* and *Poupitch* without pointing to any part of either reference, which would motivate one to combine these references. The Examiner has therefore not satisfied his obligation in establishing a prime facie case of obviousness. Further, *Edwards* actually teaches away from claim 1 of the present application, as *Edwards* discloses the device that is designed for being placed on a single item as opposed to two separate items. The device in *Edwards* includes a cap structure 30 having a ring 48 that may be joined to a cap element 32. A flexible strip 58 is positioned between the ring in cap element 32. The flexible strip permits the ring in cap element to flex back and forth such that a first side of the cap element confronts a first side of the ring 48 or a second side of the ring 48 confronts a second side of the cap element 32. But the cap element and ring cannot be connected to a first item and/or a second item, while simultaneously being able to confront similar sides. This is because the cap element 32 includes a diaphragm 34 effectively providing a closed end on the cap element 32. For example, with reference to FIG. 5 of *Edwards*, when the ring 48 is positioned on top of cap element 32, the ring may receive a bottle or the like within its opening, but the diaphragm 34B, in this figure, prevents the bottle from being connected to the cap element 32B in the figure. Therefore, unless the flexible strip 48 somehow permits the diaphragm to be removed, the flexible strip in *Edwards* does not mimic the connecting element within claim 1 of the present application.

As stated before, when the Examiner is combining two

references, *Edwards* and *Poupitch*, he must incorporate the entire *Edwards* reference and even those features that teach away from the present invention, such as the diaphragm. Therefore, if the diaphragm was to be incorporated within the device of *Poupitch*, the diaphragm would prevent the device of *Poupitch* from connecting two elements as included within claim 1. Therefore, Applicant asserts that claim 1 as well as its dependent claims are patentably distinct from a combination of *Poupitch* and *Edwards*. And the Examiner has not satisfied the requirement of illustrating a motivation to combine the two references. Even if the two references are combinable, when combined, they teach away from claim 1 of the present application.

Similarly, independent claim 12 includes a similar recitation regarding the first element and the second element being pivotal about a center of the connecting element in a first direction or a second direction while also being attached with the first end/or second items. Thus, for reasons similar to those discussed above with regard to claim 1, Applicant respectively traverses the Examiner's rejection with regard to claim 12 and asserts that claim 12 and its dependent claims are patentably distinct over the combination of *Poupitch* and *Edwards*.

Claim 2-5 and 13-16 rejected under 35 U.S.C. § 103(a) as being unpatentable over *Poupitch* in view of *Edwards* and further in view of U.S. Patent No. 5,191,975 to *Pezzoli et al.* *Pezzoli* is cited for teaching a first element having a first open end and a second element having a second open end. Regardless, *Pezzoli* still does not rectify the deficiencies of *Poupitch* and *Edwards* as *Pezzoli* does not allow the first element and second element to be pivoted towards one another in either direction as included within claim 12 and similarly discussed

with regard to claim 1. Thus, claim 2-5 and 13-16 based on their dependency from claims and 12 respectively, should also be deemed patentable over prior art.

Applicant therefore asserts that the claims of the present application should be deemed allowable over the art cited.

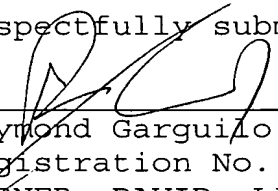
In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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